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January 30, 2012

VIA FACSIMILE AND CERTIFIED MAIL, R/R/R

Ms. Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
P. O. Box 13087
MC 105
Austin, Texas 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2012 JAN 30 PM 4:54
CHIEF CLERKS OFFICE

Re: Docket No. 2011-2265-AIR; TCEQ Air Quality Permit No. 73384; Enterprise Products
Operating LLC; Bandera Compressor Station

Dear Ms. Bohac:

Enclosed is a copy of Enterprise Products Operating LLC's Response to the Request for
Contested Case Hearing.

Please feel free to contact me at (713) 651-3760 if you have any questions.

Very truly yours,

Eddie Lewis

Edward Lewis

TCEQ DOCKET NO. 2011-2265-AIR**APPLICATION BY****ENTERPRISE PRODUCTS
OPERATING LLC****BANDERA COMPRESSOR STATION
BANDERA, BANDERA COUNTY****AIR QUALITY PERMIT NO. 73384**§
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§**BEFORE THE****TEXAS COMMISSION ON****ENVIRONMENTAL QUALITY**TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2012 JAN 30 PM 4:54
CHIEF CLERKS OFFICE**ENTERPRISE PRODUCTS OPERATING LLC'S RESPONSE TO THE
REQUEST FOR CONTESTED CASE HEARING****TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:**

Enterprise Products Operating LLC ("Enterprise") files this Response to the Request for a Contested Case Hearing ("Response"). Enterprise respectfully requests that the Texas Commission on Environmental Quality ("TCEQ" or the "Commission") deny the hearing request of Mr. David Mabry and approve Air Quality Permit No. 73384, as proposed by the Executive Director.

I. BACKGROUND**A. Permit History**

The facility at issue in this matter is located at 4995 State Highway 16 S, Bandera, Bandera County, Texas (the "Facility"). TCEQ issued Air Quality Permit No. 73384 to Enterprise for the Facility on March 25, 2005. On October 28, 2010, Enterprise submitted an application to TCEQ to amend Air Quality Permit No. 73384. TCEQ declared the application administratively complete on March 8, 2011.

Through its application to amend Air Quality Permit No. 73384, Enterprise is seeking an NSR authorization under Texas Clean Air Act ("TCAA") § 382.0518. The proposed permit will authorize the modification of an existing facility that may emit air contaminants. This permit will authorize Enterprise to modify an existing compressor station, increasing the authorized emissions of volatile organic compounds ("VOC") and carbon monoxide ("CO") from three reciprocating engines at its site. In addition, Enterprise would update its maximum allowable emission rates table ("MAERT") to reflect emitted formaldehyde emissions.

Constituents authorized to be emitted under this permit include organic compounds, CO, nitrogen oxides ("NO_x"), sulfur dioxide ("SO₂"), formaldehyde ("CH₂O"), and particulate matter ("PM"). In addition to these constituents, the Executive Director's staff has considered the

applicable National Ambient Air Quality Standards ("NAAQS"), standards contained in TCEQ's rules, and TCEQ's Effect Screening Levels ("ESLs").

The Notice of Receipt and Intent to Obtain an Air Quality Permit for this permit application was published on March 31, 2011, in the Bandera County Courier. The Notice of Application and Preliminary Decision for an Air Quality Permit was published on July 28, 2011, in the Bandera County Courier. One timely request for a public meeting was received. The request for a public meeting was denied by the Executive Director's staff in accordance with 30 Tex. Admin. Code § 55.154(c). The public comment period for this application ended August 29, 2011. A copy of the amended MAERT and proposed permit was available for viewing at the Bandera County Public Library, 515 Main Street, Bandera, TX 78003 during the public comment period. The Executive Director's staff also filed a copy of the updated MAERT and permit conditions for Air Quality Permit No. 73384 with its Response to Comments.

B. Request for Contested Case Hearing

Mr. Mabry submitted a request for a contested case hearing on April 7, 2011. *See* Attachment A. In that request, Mr. Mabry indicated that his residence is located at 2088 Forest Trail, Bandera, Bandera County, Texas. He stated, "I would like to have a contested case hearing given the fact that I live less than a half mile from the sub station [*sic*]." In the request, Mr. Mabry raised the following issues:

(1) The proximity of the Facility to adjacent subdivisions and the Privilege Creek surface water basin;

(2) The Facility will adversely affect:

(a) the health and welfare of the people who live in the areas surrounding the substation, specifically the neighboring subdivisions of Bandera Ranch Acres and Bandera River Ranch, and the ranchers and farmers that live along and in the Privilege Creek basin;

(b) the health of anyone who has medical issues relating to the heart and lungs;

(c) the surrounding environment, the air and precious water which we depend on to sustain life in a drought-prone area of the Texas hill country.

(3) The Facility's emissions will also be spread by traffic traveling to and from Bandera, Texas.

Mr. Mabry also inquired how the constituents would be released from the Facility and at what tonnage per year; what the PM consists of; and whether the PM will be captured through a catalyst or allowed to be emitted.

C. Executive Director's Response to Comments

The Executive Director submitted his Response to Comments on November 2, 2011. He stated that land use and zoning issues were beyond TCEQ's jurisdiction and the scope of the review of the permit application. He also determined, "[B]ased on the potential concentrations

reviewed by TCEQ staff, it is not expected that existing health conditions will worsen, or that there will be adverse health effects in the general public, sensitive subgroups (including children, pregnant women, the elderly, and people with preexisting conditions such as asthma), or animal life as a result of exposure to emissions from the Applicant's facility." Finally, he stated that, like land use issues, traffic issues or emissions from roads or vehicles are not within the scope of TCEQ's jurisdiction or its review of the permit application.

II. APPLICABLE LAW

A contested case hearing may be requested by the Commission, the Executive Director, the applicant, or an affected party, when authorized by law. 30 TEX. ADMIN. CODE § 55.201(b). An "affected person" is a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. TEX. WATER CODE § 5.115(a); 30 TEX. ADMIN. CODE § 55.203(a). An interest common to members of the general public does not qualify as a personal justiciable interest. 30 TEX. ADMIN. CODE § 55.203(a).

A hearing request must, among other things, identify the requestor's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public. 30 TEX. ADMIN. CODE § 55.201(d)(2).

In determining whether a person is an affected person, the Commission is to consider all factors, including, but not limited to, the following:

(1) whether the interest claimed is one protected by the law under which the application will be considered;

(2) distance restrictions or other limitations imposed by law on the affected interest;

(3) whether a reasonable relationship exists between the interest claimed and the activity regulated;

(4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

(5) likely impact of the regulated activity on use of the impacted natural resource by the person; and

(6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TEX. ADMIN. CODE § 55.203(c).

With respect to a request for a contested case hearing, the Commission may determine whether a hearing request meets the requirements of 30 TEX. ADMIN. CODE ch. 55, subch. F. 30

TEX. ADMIN. CODE § 55.211(b)(2), (3). If the Commission determines that the request does not meet the requirements, the Commission may act on the application. 30 TEX. ADMIN. CODE § 55.211(b)(2) If the Commission determines that the request meets these requirements and, if the request raises disputed issues of fact that were raised during the comment period, and are relevant and material to the Commission's decision on the application, the Commission may specify the number and scope of the specific factual issues to be referred to SOAH; specify the maximum expected duration of the hearing; and direct the chief clerk to refer the issues to SOAH for a hearing. 30 TEX. ADMIN. CODE § 55.211(b)(3).

III. ANALYSIS OF HEARING REQUEST

A. Mr. Mabry Did Not Establish "Affected Person" Status

A hearing request must, among other things, identify the requestor's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public. 30 TEX. ADMIN. CODE § 55.201(d)(2).

Mr. Mabry's request stated that he lives less than one-half mile from the Facility. This statement is not accurate. The Facility is located at 4995 State Highway 16 S, Bandera, Bandera County, Texas. Mr. Mabry stated that his residence is located at 2088 Forest Trail Drive, Bandera, Bandera County, Texas. Based on this information, Mr. Mabry's residence is approximately 2.3 miles from the Facility, in a north-northwesterly direction, as the crow flies. *See Attachment B.* In further support of these facts, Enterprise is providing an Affidavit of Gary Stump. *See Attachment C.* Mr. Mabry did not provide any other information asserting a likely impact of the Facility's operations on his health and safety, or on his use of his property. Nor did Mr. Mabry assert any current impact from the Facility's current operations. The Facility has been operating at this location since about 1968.¹

Mr. Mabry's request does not include any other statement or assertion regarding how and why he believes *he* will be adversely affected by the proposed facility or activity in a manner not common to members of the general public. He believes that the permit should not be granted based on the proximity of the Facility to "adjacent subdivisions" and the Privilege Creek surface water basin, specifically mentioning the Bandera Ranch Acres and Bandera River Ranch subdivisions, and "all the ranchers and farmers that live along and in" the Privilege Creek basin. Mr. Mabry does not state whether he lives in either of the above-mentioned subdivisions and does not state whether he is a rancher or farmer. Mr. Mabry does not purport to represent either subdivision and does not request a hearing on behalf of either subdivision. He generally asserts that the Facility's emissions will affect those with heart or lung issues, and will adversely affect the environment, and contaminate air and water. None of these statements meets the requirement

¹ Enterprise does not anticipate that operations or actual emissions from the facility will change as a result of the permit amendment. Instead, the permit amendment application was submitted so that estimated, and authorized, emissions would be based on more current emissions factors. Further, the facility has recently added to the height of its exhaust stacks, so that ground-level concentrations of emissions in the vicinity of the facility should be lower.

that he provide a specific, written statement that explains how and why he believes he will be adversely affected by the Facility.

The request inaccurately depicts the proximity of the Facility to Mr. Mabry's residence. Given the actual distance between the Facility and his residence (2.3 miles instead of less than 0.5 miles), Mr. Mabry has not provided a sufficient basis for the Commission to determine that the Facility would have a likely impact on Mr. Mabry's health and safety, or on his use of his property.

Further, the request does not contain any other information to demonstrate how and why Mr. Mabry believes he will be adversely affected by the Facility. The general statements included in the request are insufficient to support a contention that Mr. Mabry will be adversely affected by the Facility in a manner not common to members of the general public.

An "affected person" is a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. TEX. WATER CODE § 5.115(a); 30 TEX. ADMIN. CODE § 55.203(a). An interest common to members of the general public does not qualify as a personal justiciable interest. 30 TEX. ADMIN. CODE § 55.203(a). Mr. Mabry has not demonstrated, through his request, that he is an "affected party," such that he is eligible to request a contested case hearing. For the foregoing reasons, Enterprise respectfully requests that the Commission deny the hearing request on this basis, and grant the permit as proposed by the Executive Director.

B. Mr. Mabry Raises, at Best, Limited Relevant and Material Fact Issues

In his hearing request, Mr. Mabry raised three issues for the Commission's consideration. First, he asserted that the Permit should not be issued because of the proximity of the Facility to adjacent subdivisions and the Privilege Creek surface water basin. As the Executive Director noted, land use and zoning issues are not within the jurisdiction of the TCEQ and, therefore, are not relevant and material to the Commission's determination as to whether to issue the proposed Permit.

Second, Mr. Mabry generally alleged that the Facility would cause adverse affects to the health and welfare of the people who live in the areas surrounding the substation; to the health of anyone with heart and lung issues; and to the environment, the air and water. Mr. Mabry did not provide any information or data to support these allegations. In his Response to Comments, the Executive Director noted that, for air quality applications such as the one at issue, the potential impacts to human health and welfare, or the environment are determined by comparing predicted emission concentrations from the proposed changes to the facility to appropriate state and federal standards and effects screening levels. The specific health-based standards or guidance levels employed in evaluating the potential emissions include the state and federal standards and ESLs. TCEQ's Air Permits Division reviewed the modeling analysis provided as part of the application and determined it to be acceptable. As a result, the Executive Director has determined that the predicted ground level concentrations of each contaminant from the Facility are not likely to adversely impact any off-property receptors, much less Mr. Mabry's property, located some 2.3 miles away from the Facility.

Further, Enterprise disputes that its operations will impact water quality, as Mr. Mabry has alleged. Regardless, this issue is not relevant and material to this proceeding, which address air quality issues.

Third, Mr. Mabry alleged that the Facility's emissions will also be spread by traffic traveling to and from Bandera, Texas. As the Executive Director has noted, TCEQ does not have jurisdiction to regulate emissions from mobile sources. Further, a road is not considered a facility that can be regulated by TCEQ. *See* TEX. HEALTH & SAFETY CODE § 382.003(6).

In the event that the Commission determines, for the purposes of this proceeding, that Mr. Mabry is an affected person entitled to request a contested case hearing (which Enterprise disputes), Enterprise respectfully requests that the Commission limit its referral of fact issues to SOAH to the following disputed issues:

1. Whether VOC, CO and formaldehyde emissions authorized by the draft permit would cause or contribute to a violation of an National Ambient Air Quality Standard.
2. Whether the Facility's emissions of VOC, CO and formaldehyde authorized by the draft permit would adversely impact the Requestor's health.
3. Whether the Facility's emissions of VOC, CO and formaldehyde authorized by the draft permit would cause nuisance conditions.

Enterprise respectfully requests that the Commission not refer the following issues to SOAH:

4. Traffic: Whether the application adequately addresses dust emissions from traffic on surrounding roads. This issue is not relevant and material to this proceeding.
5. Mobile Source Emissions: Whether the application adequately addresses mobile source emissions from traffic on surrounding roads. This issue is not relevant and material to this proceeding.
6. Proximity of Facility to Subdivisions: Whether the application adequately addresses the proximity of the Facility to subdivisions. This land use or zoning issue is not relevant and material to this proceeding.
7. Proximity of Facility to Privilege Creek: Whether the application adequately addresses the proximity of the Facility to Privilege Creek and the potential for water quality impacts. This issue is not relevant and material to this proceeding.

IV. LOCATION AND MAXIMUM EXPECTED DURATION OF THE CONTESTED CASE HEARING

In the event that the Commission determines, for the purposes of this proceeding, that Mr. Mabry is an affected person entitled to request a contested case hearing, Enterprise respectfully recommends that the contested case hearing be held in Austin, and last no longer than eight (8) months from the preliminary hearing to the proposal for decision.

V. APPLICANT'S RECOMMENDATION

Enterprise respectfully recommends that the Commission:

A. Find that Mr. Mabry is not an "affected person" and is therefore not eligible to request a contested case hearing in this matter; and

B. Grant the Executive Director's proposed Air Quality Permit No. 73384.

In the event that the Commission determines, for the purposes of this proceeding, that Mr. Mabry is an affected person entitled to request a contested case hearing, Enterprise respectfully recommends that the Commission:

A. Refer issues #1-3, as described in Section III.B. above, to SOAH;

B. Not refer issues #4-7, as described in Section III.B. above, to SOAH, because these issues are neither relevant nor material to the application;

C. Find that the contested case hearing should be held in Austin;

D. Find that the maximum duration of the contested case hearing should be no longer than eight (8) months; and

E. Require that the TCEQ's Executive Director participate as a party in the SOAH hearing.

Respectfully Submitted,

By:



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Attorneys for Applicant,
Enterprise Products Operating LLC

CERTIFICATE OF SERVICE

I certify that a true copy of this Response to the Request for a Contested Case Hearing was served on each of the persons listed on the Mailing List attached hereto, in accordance with TCEQ rules, on January 30, 2012:



EDWARD C. LEWIS

MAILING LIST
ENTERPRISE PRODUCTS OPERATING, LLC
DOCKET NO. 2011-2265-AIR; PERMIT NO. 73384

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Terry L. Hurlburt
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Fax: (512) 239-3311

REQUESTER(S):

David Mabry
P. O. Box 1952
Bandera, Texas 78003-1952

ATTACHMENT A

From: PUBCOMMENT-OPA
To: PUBCOMMENT-OCC2
Date: 4/8/2011 9:18 AM
Subject: Fwd: Public comment on Permit Number 73384
Place: PUBCOMMENT-OCC2

PM
H

>>> PUBCOMMENT-OCC 4/7/2011 12:48 PM >>>

>>> <dwm043@live.com> 4/7/2011 12:37 PM >>>

REGULATED ENTY NAME BANDERA COMPRESSOR STATION
RN NUMBER: RN101630481
PERMIT NUMBER: 73384
DOCKET NUMBER:
COUNTY: BANDERA
PRINCIPAL NAME: ENTERPRISE PRODUCTS OPERATING LLC
CN NUMBER: CN603211277
FROM
NAME: David Mabry
E-MAIL: dwm043@live.com
COMPANY:
ADDRESS: PO BOX 1952
BANDERA TX 78003-1952
PHONE: 2109990141
FAX:

COMMENTS: I would like to have a contested case hearing given the fact that I live less than a half mile from the sub station. My address is 2088 Forest Trail. I would like to request a public meeting on this matter and at this time given such short notice so that others may be more informed on the matter. This permit should not be allowed on the basis of how close the sub station is to adjacent sub divisions and the Privledge Creek surface water basin which is less than a mile from the Medina river. I believe it will adversely affect the health and welfare of the people who live in the areas surrounding the sub station. The neighboring sub divisions are Bandera Ranch acres, Bandera River Ranch and all the ranchers and farmers that live along and in the Privledge creek basin. The emission of these types of contaminants would also adversely affect the health of anyone who has medical issues relating to the heart and lungs. The emissions of these types of contaminants would also be spread (given its close proximity to the hwy 16 corridor) by traffic traveling to and from Bandera, Tx. If this permit is allowed how would these contaminants be released and at what tonnage per year? What does the particulate matters listed in the public notice consist of and

mw

will these matters be captured thru a catlist or just allowed to be blown in the air? The release of these contaminants will adversely affect the surrounding environment, contaminate the air and precious water which we depend on to sustain life in a drought prone area of the Texas hill country.

ATTACHMENT B

Received

Jan 30 2012 04:54pm

2012-01-30

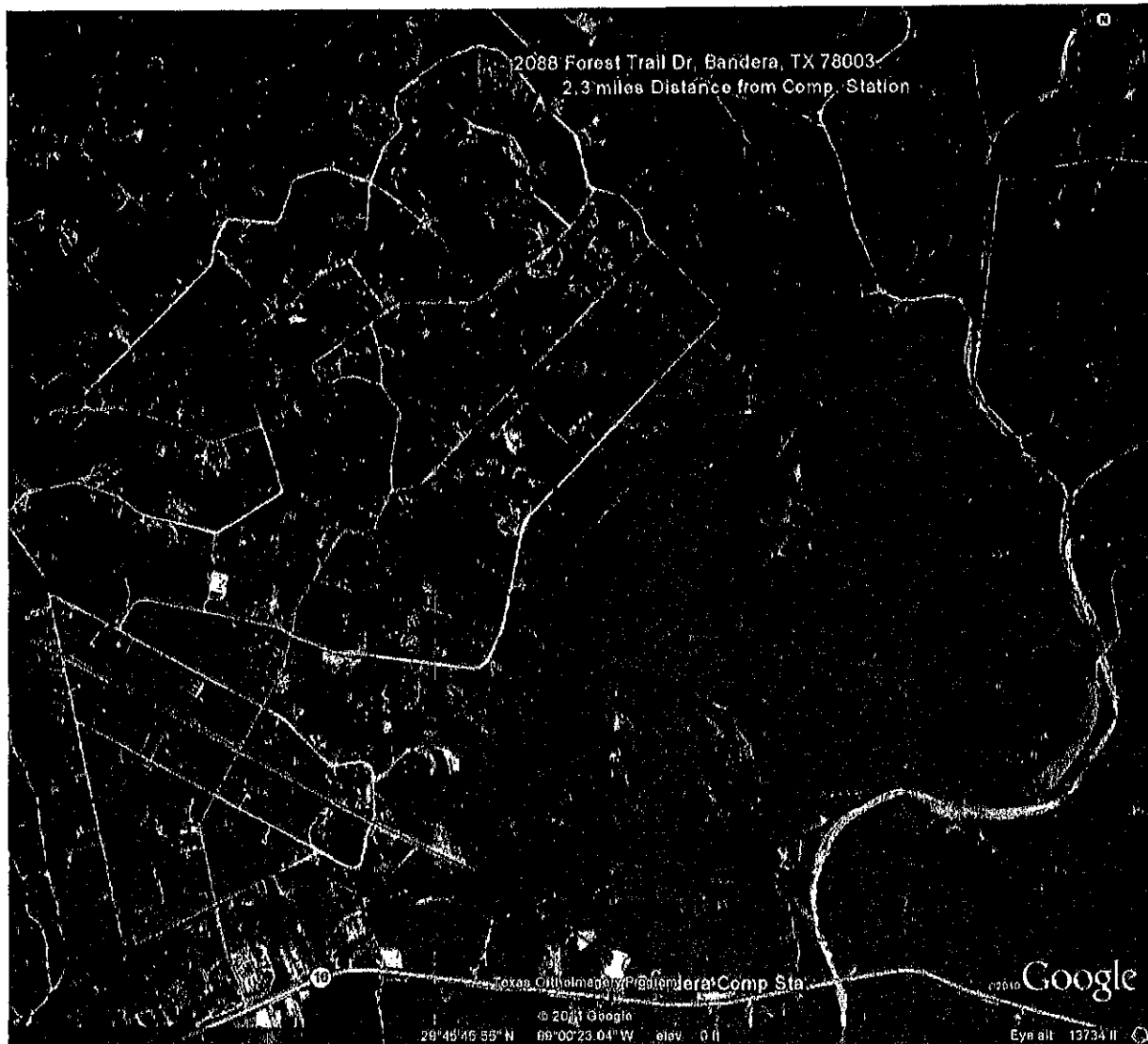
04:51PM

FROM-Fulbright & Jaworski

T-300

P.017/019

F-730



ATTACHMENT C

AFFIDAVIT OF MR. GARY STUMP**STATE OF TEXAS**

§

COUNTY OF BEXAR

§

§

BEFORE ME, the undersigned authority, on this day personally appeared Mr. Gary Stump, who stated to me the following:

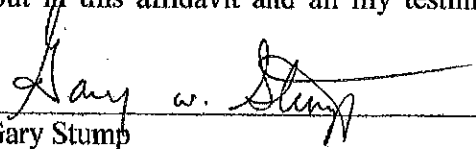
My name is Gary Stump, and I am over the age of 18, of sound mind, and competent to testify. I am the Operations Supervisor for Enterprise Products Operating LLC's ("Enterprise") Bandera Compressor Station. In that role, I am responsible for supervising operations at the Bandera Compressor Station. I am familiar with the application submitted by Enterprise regarding Air Quality Permit No. 73384. I have reviewed the request for contested case hearing filed by Mr. David Mabry (the "Request") and have assisted in the preparation of Enterprise's response to the Request.

In reviewing the Request, I noted that Mr. Mabry stated that he lived less than one-half mile from the facility that is the subject of the permit application. The facility is located at 4995 State Highway 16 S, Bandera, Bandera County, Texas (the "Facility"). Mr. Mabry stated that his residence is located at 2088 Forest Trail Drive, Bandera, Bandera County, Texas.

I entered the address of the Facility and the address of Mr. Mabry's residence into the Google Earth software. Using the ruler function of the software, I calculated that the distance between the Facility and Mr. Mabry's residence was 2.3 miles.

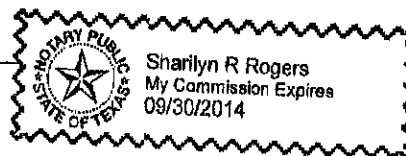
To confirm the location of Mr. Mabry's residence, I drove to 2088 Forest Trail Drive Bandera, Bandera County, Texas. I confirmed that the house located at this address is the same house that was depicted on the Google Earth software. Further, I am familiar with the location of the Facility. Based on my knowledge of the location of the Facility, I believe the 2.3 miles shown by the Google Earth software to be the distance between the Facility and Mr. Mabry's residence to be a reasonable value.

I have personal knowledge of the facts set out in this affidavit and all my testimony herein is true and correct.


Mr. Gary Stump

SWORN TO AND SUBSCRIBED before me by Mr. Gary Stump, on the 26th day of January, 2012 to certify which witness my hand and seal of office.


Notary Public in and for The State of Texas



FULBRIGHT
& Jaworski L.L.P.
Attorneys at Law

Fulbright Tower • 1301 McKinney, Suite 5100 • Houston, Texas 77010-3095
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FACSIMILE TRANSMISSION**DATE:** January 30, 2012**MATTER NUMBER:** 07675

11011526

RECIPIENT(S)	FAX NO.:	PHONE NO.:
Bridget Bohac, Chief Clerk	512-239-3311	512-239-3300

FROM: Edward Lewis**FLOOR:** 4639**PHONE:** (713) 651-3760**FAX:** (713) 651-5246**RE:** Enterprise Products Response**NUMBER OF PAGES INCLUDING COVER PAGE:** 19**MESSAGE:**

<div data-bbox="1289 959 1557 1283" data-label="Text"><p>TEXAS COMMISSION ON ENVIRONMENTAL QUALITY 2012 JAN 30 PM 4:54 CHIEF CLERKS OFFICE</p></div>
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AS SOON AS POSSIBLE.**